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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

WESTLAKE SERVICES, LLC
d/b/a WESTLAKE FINANCIAL
SERVICES,

Plaintiff,

v.

CREDIT ACCEPTANCE
CORPORATION,

Defendant.

Case No.: 2:15-cv-07490 SJO (MRWx)

**STIPULATION AND JOINT
MOTION RE: EXTENSION OF TIME
FOR DISCOVERY AND
TESTIMONY FROM THIRD-PARTY
DAVID BALL IN LIGHT OF FIFTH
AMENDMENT ASSERTIONS AND
ONGOING BOE INVESTIGATION**

Hon. S. James Otero
Assigned to:

Mag. Judge
Michael R. Wilner

Discovery Cutoff: June 16, 2017
MSJ Filing Deadline: July 28, 2017
Pretrial Conference: Nov. 20, 2017
Trial: Dec. 4, 2017

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1 **WHEREAS**, in ruling on Defendant Credit Acceptance’s motion to exclude third-
2 party David Ball as a fact witness, this Court ordered that “Credit Acceptance may
3 request documents from David Ball and Ball Automotive, and depose David Ball,” and
4 set a June 16, 2017, deadline—at the Parties’ request—for completing that discovery
5 (Order Granting Joint Stipulation at 2 [ECF No. 182]; Order Re: Motion to Preclude Ball
6 at 2 [ECF No. 176].);

7 **WHEREAS**, after entry of that order, Mr. Ball’s and Ball Automotive’s attorney,
8 Ken Barish of Barish Tax Law, informed Credit Acceptance that the State of California’s
9 Board of Equalization (“BOE”) is conducting an investigation into Ball Automotive;

10 **WHEREAS**, in light of the pending BOE investigation, Mr. Barish has informed
11 the Parties that Mr. Ball anticipates that he will invoke his Fifth Amendment right against
12 self-incrimination to certain questions during a deposition in this case;

13 **WHEREAS**, Mr. Barish has informed the Parties that the BOE seized in January
14 2017 Mr. Ball’s and Ball Automotive’s documents in connection with the investigation
15 and maintains possession of those documents indefinitely with minor exceptions;

16 **WHEREAS**, depending on the outcome of the investigation and after Credit
17 Acceptance deposes Mr. Ball, a possibility exists that he may elect to provide written or
18 oral testimony without invoking his Fifth Amendment right against self-incrimination and
19 the BOE may have returned the remainder of his seized documents;

20 **WHEREAS**, notwithstanding the BOE investigation and anticipated invocations
21 of the Fifth, Westlake does not want to prejudice its ability to use Mr. Ball as a third-
22 party fact witness in this matter;

23 **WHEREAS**, the Parties desire to avoid unfair prejudice to Credit Acceptance
24 should Mr. Ball invoke the Fifth Amendment as to certain subjects during his deposition
25 and then later elects to freely provide testimony on those subjects whether at summary
26 judgment or trial;

27 **WHEREAS**, Mr. Ball’s intention to invoke his Fifth Amendment right against
28 self-incrimination has complicated and delayed scheduling Mr. Ball’s deposition and

1 obtaining documents from him;

2 **WHEREAS**, Mr. Ball's attorney had surgery on June 9 and anticipates that he will
3 not be able to return to work for at least a week;

4 **WHEREAS**, in light of the foregoing, the Parties and Mr. Ball's attorney desire an
5 additional two weeks to complete Mr. Ball's deposition and obtain the limited, responsive
6 documents remaining in his and his company's possession;

7 **IT IS HEREBY STIPULATED AND AGREED**, by and between counsel for the
8 undersigned parties, that:

- 9 1. Credit Acceptance may have until Friday, June 30, 2017 to depose Mr. Ball.
- 10 2. Neither Westlake nor its experts may rely on or use any testimony, including at
11 summary judgment or trial, that Mr. Ball may later provide on subject matters on
12 which Mr. Ball invoked his Fifth Amendment right against self-incrimination
13 during his deposition.
- 14 3. At summary judgment or trial, Westlake may not rely on or use any documents
15 from Mr. Ball or Ball Automotive other than those produced to Credit Acceptance
16 before Mr. Ball's deposition.¹ Notwithstanding anything to the contrary contained
17 herein, Mr. Ball and Ball Automotive shall have a continuing obligation to produce
18 to Credit Acceptance any documents responsive to the extant subpoenas to the
19 extent Mr. Ball or Ball Automotive gains possession, custody or control of any
20 such documents currently in the possession of the BOE. Credit Acceptance
21 reserves the right to use any such belatedly produced documents for any purpose.
22 Credit Acceptance further reserves the right to challenge the use or admissibility of

23 _____

24 ¹ Per this Court's May 23, 2017, order, Westlake's experts may not rely on Mr. Ball's
25 testimony or any documents produced by him in preparing their supplemental reports,
26 which are to be served by June 23, 2017. (Order Granting Joint Stip. ¶ 3 [ECF No. 182]
27 ("Each expert is entitled to supplement his or her report by adding citations to the
28 following: Westlake's experts may supplement their reports with citations to documents
received from Mr. Roberts and documents and testimony from Messrs. McCluskey and
Knoblauch, and Credit Acceptance's experts may supplement their reports with citations
to documents received from Mr. Ball and Ball Automotive and testimony from Mr.
Ball."))

1 any testimony from Mr. Ball to the extent such testimony relates to documents that
2 are responsive to the extant subpoenas, but which Mr. Ball or Ball Automotive
3 were unable to produce.
4

5 DATED: June 15, 2017
6

7 SKADDEN, ARPS, SLATE, MEAGHER &
8 FLOM LLP

9 By: /s/ Jason D. Russell
10 Jason D. Russell
Attorneys for Defendant
CREDIT ACCEPTANCE CORPORATION

11 DATED: June 15, 2017
12

13 BIRD, MARELLA, BOXER, WOLPERT,
14 NESSIM, DROOKS, LINCENBERG & RHOW,
15 P.C.

16 By: /s/ Timothy B. Yoo
17 Timothy B. Yoo
Attorneys for Plaintiff
18 WESTLAKE SERVICES, LLC d/b/a
WESTLAKE FINANCIAL SERVICES
19

20 **ATTESTATION**
21

22 I, Jason D. Russell, attest that the signatories listed above, and on whose behalf the
23 filing is submitted, concur in the filing's content and have authorized the filing.
24

25 By: /s/ Jason D. Russell
26 Jason D. Russell
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